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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re N. C. et al., Persons Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

A. C. et al.,

Defendants and Appellants.

D057237

(Super. Ct. No. NJ13243A-C)

APPEAL from orders of the Superior Court of San Diego County, Michael

Imhoff, Commissioner. Affirmed.

A.C. and Julian P. (together, the parents) appeal juvenile court orders terminating their parental rights to their minor children N.C., Jennifer P. and Anthony P.

(collectively, the minors) under Welfare and Institutions Code¹ section 366.26. The parents challenge the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude terminating their parental rights. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2006, four-year-old N.C., two-year-old Jennifer and one-year-old Anthony became dependents of the juvenile court and were removed from parental custody based on findings Julian² had sexually abused N.C. (§ 300, subd. (d)), and Jennifer and Anthony were at substantial risk of sexual abuse (§ 300, subd. (j)). The minors were placed with the maternal grandparents and the parents were ordered to participate in reunification services.

During the next six months, Julian continued to deny any sexual abuse and made no progress in treatment. A.C. complied with all the provisions of her case plan and stated she had learned how to protect her children. The court placed the minors with A.C., granted her sole custody and terminated its dependency jurisdiction. Julian was ordered to have no contact with N.C., but was allowed supervised visitation with Jennifer and Anthony.

¹ Statutory references are to the Welfare and Institutions Code.

² Julian is the father of Jennifer and Anthony. N.C.'s father is not a party to this appeal.

In May 2008, the San Diego County Health and Human Services Agency (Agency) removed the minors from A.C.'s custody because A.C. had allowed Julian to move back into the family home, and he was again sexually abusing N.C. A.C. claimed Julian had done nothing wrong, and N.C. lied about the sexual abuse. The court sustained the allegations of the petitions, removed the minors from A.C.'s custody and placed them with the maternal grandparents. Further reunification services were ordered for the parents.

The parents failed to participate in services for sexual abuse during the next 12 months, and refused to acknowledge the need for treatment. Julian continued to deny the molestation had occurred. The parents got married and were living together. The minors remained placed with the maternal grandparents, to whom they were bonded. The grandparents were providing excellent care for the minors and were willing to adopt them should reunification efforts fail. At a 12-month review hearing, the court terminated services and set a hearing to select and implement a permanent plan for the minors.

The social worker recommended adoption as the minors' permanent plans. She assessed the minors as generally and specifically adoptable. The minors had lived with the maternal grandparents for more than two years, and the grandparents were committed to adopting them. N.C. and Jennifer understood the concept of adoption and said they wanted to be adopted by their grandparents. Anthony said he liked living with his grandmother.

A.C. was having regular supervised visits with the minors. She was sometimes unable to control the minors during visits, and they seemed to have no respect for her.

A.C. did not understand why the minors had been removed from her custody, maintaining N.C. had not been sexually abused. Although A.C. loved her children, she persisted in her belief that Julian had done nothing wrong.

In the social worker's opinion, A.C. and the minors did not have a parent-child relationship. The minors looked to their caregivers to meet all their needs. Although A.C. loved her children, she could not provide them with a safe home because she remained loyal to Julian and refused to believe there had been any sexual abuse. The social worker noted the minors deserved the benefits adoption would provide them.

At a contested selection and implementation hearing, A.C. testified she visited the minors three times a week at the home of the maternal grandparents, where she played with them and attended to their needs. The minors were happy to see her, sometimes did not want visits to end, and wanted to leave with her. A.C. said it was unfair that the minors were taken away from her and there was "no reason for it."

Julian testified he visited Jennifer and Anthony once a week. He did not want them to be adopted, stating, "I need my children. They're mine. They love me. They need me." Julian claimed he was being blamed for something he did not do.

After considering the evidence and argument of counsel, the court found the minors were adoptable and none of the exceptions to adoption applied. The court terminated parental rights and referred the minors for adoptive placement.

DISCUSSION

A.C. challenges the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i)

did not apply to preclude terminating her parental rights. A.C. asserts she regularly visited the minors, who had a loving, positive, beneficial relationship with her. She further asserts the minors would suffer detriment if parental rights were terminated. Julian joins in these arguments.

A

After reunification services are terminated, the focus of a dependency proceeding shifts from preserving the family to promoting the best interests of the child, including the child's interest in a stable, permanent placement that allows the caregiver to make a full emotional commitment to the child. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.) At the selection and implementation hearing, the court has three options: (1) to terminate parental rights and order adoption as the permanent plan; (2) to appoint a legal guardian for the child; or (3) to order the child placed in long-term foster care. (*Ibid.*)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under one or more of the enumerated statutory exceptions. (§ 366.26, subd. (c)(1)(A) & (B)(i)-(vi); *In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.) "The parent has the burden of establishing the existence of any circumstance that constitutes an exception to termination of parental rights." (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1039.) Because

a selection and implementation hearing occurs "after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

Section 366.26, subdivision (c)(1)(B)(i) provides an exception to the adoption preference if terminating parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 574-575; accord *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811; *In re Jason J.* (2009) 175 Cal.App.4th 922, 936-937.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child or pleasant visits. (*In re Jason J.*, *supra*, 175 Cal.App.4th at pp. 936-937; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must show he or she occupies a parental role in the

child's life, resulting in a significant, positive emotional attachment from child to parent. (*In re Derek W.*, *supra*, at p. 827; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

We review the court's finding regarding the applicability of a statutory exception to adoption for substantial evidence. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) In this regard, we do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) On appeal, the parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Here, A.C. regularly visited the minors. However, she did not meet her burden of showing she had a beneficial parent-child relationship with the minors so as to overcome the legislative preference for adoption.

The evidence showed A.C. was generally appropriate and affectionate with the minors during supervised visits. She took on a parental role to the extent she prepared food for them, helped them with homework, made empathetic statements, and participated in N.C.'s therapy sessions. However, A.C. abdicated her role as a parent by continuing to deny that N.C. had been molested despite evidence to the contrary. A.C.'s proclaimed devotion to her children was belied by her loyalty to Julian at the expense of keeping the children safe. Her choice to allow Julian to remain in her life led to N.C.

being molested again. A.C.'s denial and lack of insight into reasons for the minors' removal from her custody prevented her from developing the type of parental relationship with the minors that could be deemed "beneficial."

Although the minors enjoyed visits with A.C. and knew she was their mother, there was no evidence they were negatively impacted by her absence from their daily lives. The positive bond, warmth and affection the minors shared during visits was not enough to show they had a "significant, positive emotional attachment" to A.C. such that terminating the parent-child relationship would result in *great harm* to the minors. (*In re Jason J.*, *supra*, 175 Cal.App.4th at pp. 936-937; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) "A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

Further, A.C. did not show that maintaining a relationship with the minors outweighed the benefits of adoption for them. The selection and implementation hearing occurred more than four years after the original petitions were filed. The minors are thriving in the home of their grandparents and want to be adopted by them. Although the parents believe a permanent plan other than adoption would serve the minors' best interests, adoption is the only option that would provide the minors with the stability and

permanence they need and deserve.³ (See *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419 [Legislature has decreed guardianship is not in best interests of children who cannot be returned to their parents; only adoption affords the most permanent and secure alternative]; *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368-1369 [parents' preference to preserve family unit does not override best interests of minors in the stability and security of an adoptive home].) "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.)

C

A.C. relies on *In re S.B.* (2008) 164 Cal.App.4th 289, 298-300, to support her argument she had a beneficial parent-child relationship with the minors. In *S.B.*, the evidence showed that despite the child's strong, positive, significant relationship with her caregiver, she would be "greatly harmed" by the loss of the equally significant, positive relationship she shared with her father. Additionally, the father in that case had complied with every aspect of his case plan and presented a positive bonding study. The minor

³ Contrary to A.C.'s assertion, there was no evidence the minors would suffer detriment if parental rights were terminated. In the social worker's opinion, the minors "may experience some grief and loss" as they get older, "but it will be minimal compared to the benefits of being adopted into a permanent home." Even if severing the parent-child relationship may cause the minors to experience some sadness, their relationship with A.C. is "simply not enough to outweigh the sense of security and belonging an adoptive home would provide." (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

was upset when visits ended, and she wanted to live with her father. (*In re S.B.*, *supra*, at pp. 294-295, 300-301.)

Here, in contrast, A.C. did not make such a showing. She did not complete services, and refused to address sexual abuse issues. Although a bonding study was conducted, its results were not presented to the court. The minors did not react negatively after visits with A.C., and they wanted to live with their grandparents. Contrary to A.C.'s argument, the court did not impermissibly base its findings on the minors' relationship with their caregivers. (Cf. *In re Amber M.* (2002) 103 Cal.App.4th 681, 690 [suitability of caregiver's home, without more, did not justify terminating parental rights where all professionals in the case believed beneficial parent-child relationship outweighed benefits of adoption for minors].) Instead, the court considered the safety and stability offered by the caregivers in conjunction with other evidence that A.C. and the minors did not have a beneficial parent-child relationship. Significantly, there was no direct or inferential evidence the minors would be greatly harmed if parental rights were terminated. (See *In re Jason J.*, *supra*, 175 Cal.App.4th at p. 937 [*In re S.B.*, *supra*, 164 Cal.App.4th 289 does not stand for the proposition that an order terminating parental rights must be reversed whenever there is some measure of benefit in continued contact between parent and child].)

The court selected adoption for the minors based on the evidence before it, and on the statutory preference for adoption as the most permanent plan—the one that served the minors' best interests. (*In re Jose V.* (1996) 50 Cal.App.4th 1792, 1797.) The minors, whose needs could not be met by their parents, deserve to have their custody status

promptly resolved and their placements made permanent and secure. There is no reason, supported by policy or the law, to deviate from the Legislature's preference for adoption here.

DISPOSITION

The orders are affirmed.

IRION, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.